

Essential Fish Habitat: Alaska Agreement for EAs & EISs

November 3, 1999

Consultation with National Marine Fisheries Service(NMFS) on Essential Fish Habitat(EFH).

1. Alaska Department of Transportation & Public Facilities (ADOT&PF), in accord with 50 CFR 600.920(c) will be the designated representative of the Federal Highway Administration(FHWA) in the consultation process. The FHWA remains ultimately responsible for compliance.
2. The consultation process for projects requiring an environmental assessment or an environmental impact statement will be accomplished under the existing NEPA/404 merger Agreement process.
3. As part of the initial scoping letter to NMFS, ADOT&PF will identify possible EFH resources and will request additional information as appropriate.
4. ADOT&PF, in concert with FHWA, will determine if the project may adversely effect EFH.
5. ADOT&PF will notify NMFS that a project may adversely effect EFH and will initiate discussion on possible conservation measures.
6. An EFH assessment will be incorporated in the NEPA document as part of the fish and wildlife section of the environmental consequences, and will be titled or co-titled as such.
7. ADOT&PF will provide NMFS the draft EA or pre-DEIS including the draft EFH assessment for their review and comment. NMFS will respond as appropriate including, preliminary EFH conservation recommendations. If NMFS believes that the proposed action may result in substantial adverse effects on EFH, or that additional analysis is needed to accurately assess the effects of the proposed action, NMFS will request that FHWA initiate expanded consultation.
8. ADOT&PF will revise, amend the EFH assessment as appropriate based on comments and necessary additional coordination with NMFS.
9. Transmittal of the approved EA or DEIS to NMFS will be considered "Submittal of the EFH Assessment" under 50 CFR 600.920(h)(3).

The EFH assessment, as outlined in 600.920(g), must contain the following: 1) a description of the proposed action; 2) an analysis of individual and cumulative effects of the action on EFH, the managed species, and associated species such as major prey species, including affected life history stages; 3) the agency's views regarding effects on EFH; and 4) a discussion of proposed mitigation, if applicable. Additional information which may be appropriate to include in the EFH assessment is listed in 50 CFR 600.920(g)(3).

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10. NMFS will respond, in writing, as to whether it concurs with the findings of the EFH assessment as part of their formal comments on the document. If applicable, final EFH conservation recommendations may be included.
11. If necessary, additional coordination to resolve concurrence issues will be initiated. As applicable, ADOT&PF will respond, in writing, within 30 days with respect to conservation recommendations.

The response must include a description of measures proposed for avoiding, mitigating, or offsetting the impacts of the project on EFH, as required by 50 CFR 600.920(j). If the response is inconsistent with NMFS Conservation Recommendations the reasons for not following the recommendations must be explained, including the scientific justification for any disagreements with NMFS over the anticipated effects of the project or measures needed to avoid, minimize, mitigate or offset such effects.

12. The FONSI or FEIS will address NMFS response to the transmittal.

The steps outlined above address the abbreviated consultation procedures described in 50 CFR 600.920(h). If at any point in the process it is determined that the project would result in substantial adverse effects to EFH or that additional information/analysis is needed, expanded consultation procedures will be implemented. A party may request expanded consultation at any point in the process. The parties will determine how best to implement expanded consultation based on the specifics of the project. It is recognized that additional information may be required, that a site visit will be necessary and that conservation recommendations will need to be addressed. However, to the extent practical, existing NEPA/404 Agreement procedures will be utilized to fulfill the requirements of expanded consultation.

In order to provide a reference to the sequence of activities outlined in this document to the NEPA/404 Agreement, the concurrence points are identified. Concurrence on purpose & need would be requested concurrent with or just after item 3. Concurrence on range of alternatives (preferred alternative for EA's) would be requested before or concurrent with item 5. Request for concurrence in the preferred alternative would occur before or concurrent with item 11.

Dispute Resolution

If an FHWA decision is inconsistent with NMFS EFH Conservation Recommendations, 50 CFR 600.920(j)(2) allows the NOAA Assistant Administrator for Fisheries to request a meeting with the head of the FHWA to discuss the proposed action and opportunities for resolving any disagreements. NMFS will endeavor to resolve any such issues at the field level wherever possible, typically in a meeting between the NMFS Regional Administrator and The FHWA Division Administrator.